

**INITIAL STATEMENT OF REASONS  
MANIFEST DISCREPANCIES REGULATIONS  
Department Reference Number: R-01-13**

**EFFORT TO AVOID DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS**

The previous DTSC provisions, codified in the California Code of Regulations, title 22, sections 66264.72 and 66265.72, were identical to the federal provisions, codified in 40 Code of Federal Regulations, sections 264.72 and 265.72. The proposed regulations will make the requirement more stringent than federal regulations for wastes that hold potential for uses as weapons of terror.

**STUDIES RELIED ON**

**California Environmental Quality Act:** DTSC has found this rulemaking project to be exempt under the California Environmental Quality Act (CEQA). A draft of the Notice of Exemption is available for review with the rulemaking file and will be filed with the State Clearinghouse when the regulations are adopted.

**ALTERNATIVES CONSIDERED**

DTSC considered the following alternatives:

1. Recommended Alternative: Implement new regulations that would require more stringent reporting of unresolved manifest discrepancies involving wastes that could be used as weapons of terror, namely explosive and poisonous wastes.  
  
Pro: DTSC would receive early notification and be better prepared to help prevent potential mishandling or illegal uses of those wastes.  
  
Con: Due to an anticipated increase in reporting, additional staff resources may need be redirected to review and respond to those reports.
2. Make the new manifest discrepancy reporting procedure a requirement for other hazardous wastes that can, but are less likely, to be used as weapons of terror (e.g., corrosive or flammable materials).  
  
Pro: This alternative would be effective for the protection of the public health and the environment. Hazardous waste facilities would be required to

report discrepancies involving a wider range of hazardous wastes, including those that hold a lesser potential for uses in terrorist activities.

Con: This alternative would add significant costs to DTSC, as the new reporting procedure would apply to more types of hazardous wastes, resulting in an increase in the number of reports received by DTSC. This alternative would also result in a negative economic impact on the regulated community, as hazardous waste facilities would be allowed less time to resolve discrepancies, and might be required to expend additional resources on investigations and reporting.

3. Do nothing: DTSC would continue to receive 15-day written notifications of significant discrepancies.

Pro: Less staff resources would be needed than the previous two alternatives, due to a reduced number of manifest discrepancy notifications under the former reporting procedure.

Con: The former, less comprehensive, unresolved manifest discrepancy reporting procedure would remain in place. This is not acceptable, because it does not provide timely protection of public health and the environment at a time when terrorist activity in the United States is a significant threat.

## DETAILED STATEMENT OF REASONS

A detailed statement of reasons for each section follows.

### **66262.54. Special Manifest Requirements.**

#### **Subsection (f):**

The specific term “significant discrepancies” was replaced with the general term “discrepancies.” This is necessary to assure that both “significant discrepancies” and “priority discrepancies” are reported. Sections 66264.72, subsections (a) and (c) and 66265.72, subsections (a) and (c) are cited for the proper discrepancy definitions. Subsection (a) defines a “significant discrepancy,” and subsection (c) defines a “priority discrepancy.” The provisions of sections 66264.72 and 66265.72 are identical. Section 66264.72 applies to permitted treatment, storage, and disposal facilities, and section 66265.72 applies to interim status treatment, storage, and disposal facilities. Both

citations are necessary because the section being amended applies to both types of facilities.

The authority citation to the Health and Safety Code section 208 is deleted, because section 208 was repealed.

### **Appendix to Chapter 12, Article 7**

Throughout the Appendix, the title of the obsolete form “DHS 8022-A” has been changed to the correct title “DTSC 8022-A,” as printed on the form. This is a change without a regulatory effect. Another change without regulatory effect is the capitalization of the word “Identification” in Item 6 of the Appendix.

Item 19: The specific term “significant discrepancy” was replaced with the general term “discrepancies.” This is necessary because the new regulations require the reporting of both “significant discrepancies” and “priority discrepancies.” Sections 66264.72, subsections (a) and (c), and 66265.72, subsections (a) and (c) are cited for the proper discrepancy definitions. Subsection (a) defines a “significant discrepancy,” and subsection (c) defines a “priority discrepancy.” The provisions of sections 66264.72 and 66265.72 are identical. Section 66264.72 applies to permitted treatment, storage, and disposal facilities, and section 66265.72 applies to interim status treatment, storage, and disposal facilities. Both citations are necessary because the section being amended applies to both types of facilities.

Previous language applicable to significant discrepancies only has been replaced with new language stating that owners or operators shall handle discrepancies in accordance with requirements specified in sections 66264.72 and 66265.72. This change is necessary for clarity.

The authority citation to the Health and Safety Code section 208 is deleted, because section 208 was repealed.

### **66264.71. Use of Manifest System.**

#### **Subsection (a)**

The specific term “significant discrepancies” was replaced with the general term “discrepancies.” This is necessary because the new regulations require the reporting of both “significant discrepancies” and “priority discrepancies.” Section 66264.72 (which applies to permitted treatment, storage, and disposal facilities), subsections (a) and (c)

are cited for the proper discrepancy definitions. Subsection (a) defines a “significant discrepancy,” subsection (c) defines a “priority discrepancy.” This change is necessary for clarity.

The authority citation to the Health and Safety Code section 208 is deleted, because section 208 was repealed and is now obsolete.

**66264.72. Manifest Discrepancies.**

**Subsection (a)**

In subsection (a), the language is rearranged to better define significant discrepancies, by separating the two categories of discrepancies (by weight and by type) into paragraphs (1) and (2). Subparagraphs (A) and (B) provide examples of the types of variations by weight. This change is necessary for clarity.

**Subsection (b)**

The amendment clarifies that the requirements set forth in subsection (b) do not apply to wastes listed in subsection (f) of the same section. For clarity, language is added to specify that all discrepancy letters shall be mailed to the address provided in subsection (e). This change is necessary for clarity.

**Subsection (c)**

This subsection is new language that defines “priority discrepancies”, and specifies that the definition applies to those wastes listed in subsection (f). The subsection is necessary in order to define terms used in the regulations.

**Subsection (d)**

This subsection sets forth requirements for handling priority discrepancies. It provides that any priority discrepancy that remains unresolved 24 hours after discovery must be reported to DTSC by immediately calling the complaint hotline number. Paragraphs (1) through (6) set forth information that must be reported when calling the hotline number. This information is necessary to enable an investigation of the incident by DTSC and/or other authorities.

**Subsection (e)**

This subsection sets forth an additional requirement that the hazardous waste facility owner or operator must comply with when reporting a priority discrepancy. The owner or operator must follow up by submitting a written letter to specified DTSC offices within 5 days after discovery of the unresolved priority discrepancy. The intent of this section is that the letter be submitted whether or not the discrepancy is resolved in the interim. This is necessary to minimize the need for DTSC staff to take actions which duplicate work done by owners or operators in resolving discrepancies, and in order to establish a record of the actions taken.

#### **Subsection (f)**

This subsection clarifies that the provisions of preceding subsections (c) through (e) apply only to explosive and poisonous wastes, and other regulated material that has similar properties. This is necessary to ensure the additional reporting burden applies only to hazardous wastes that have greater potential to be used for terrorist activities or that present an immediate threat to public health and safety or the environment.

The authority citation to the Health and Safety Code section 208 is deleted, because section 208 was repealed.

### **Section 66265.71. Use of Manifest System.**

#### **Subsection (a)**

The specific term “significant discrepancies” was replaced with the general term “discrepancies.” This is necessary because the new regulations require the reporting of both “significant discrepancies” and “priority discrepancies.” Subsections (a) and (c) of section 66265.72 (which applies to interim status treatment, storage, and disposal facilities), are cited for the proper discrepancy definitions. Subsection (a) defines a “significant discrepancy,” and subsection (c) defines a “priority discrepancy.” This change is necessary for clarity.

Authority citation to the Health and Safety Code section 208 is deleted, because section 208 was repealed.

### **Section 66265.72. Manifest Discrepancies.**

#### **Subsection (a)**

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In subsection (a), the language is rearranged to better define significant discrepancies, by separating the two categories of discrepancies (by weight and by type) into paragraphs (1) and (2). Subparagraphs (A) and (B) provide examples of the types of variations by weight. This change is necessary for clarity.

### **Subsection (b)**

The amendment clarifies that the requirements set forth in subsection (b) do not apply to wastes listed in subsection (f) of the same section. For clarity, language is added to specify that all discrepancy letters shall be mailed to the address provided in subsection (e). This change is necessary for clarity.

### **Subsection (c)**

This subsection is new language that defines “priority discrepancies”, and specifies that the definition applies to those wastes listed in subsection (f). The subsection is necessary in order to define terms used in the regulations.

### **Subsection (d)**

This subsection sets forth requirements for handling priority discrepancies. It provides that any priority discrepancy that remains unresolved 24 hours after discovery must be reported to DTSC by immediately calling the complaint hotline number. Paragraphs (1) through (6) set forth information that must be reported when calling the hotline number. This information is necessary to enable an investigation of the incident by DTSC and/or other authorities.

### **Subsection (e)**

This subsection sets forth an additional requirement that the hazardous waste facility owner or operator must comply with when reporting a priority discrepancy. The owner or operator must follow up by submitting a written letter to specified DTSC offices within 5 days after discovery of the unresolved priority discrepancy. The intent of this section is that the letter be submitted whether or not the discrepancy is resolved in the interim. This is necessary to minimize the need for DTSC staff to take actions which duplicate work done by owners or operators in resolving discrepancies, and in order to establish a record of the actions taken.

### **Subsection (f)**

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This subsection clarifies that the provisions of preceding subsections (c) through (e) apply only to explosive and poisonous wastes, and other regulated material that has similar properties. This is necessary to ensure the additional reporting burden applies only to hazardous wastes that have greater potential to be used for terrorist activities or that present an immediate threat to public health and safety or the environment.

The authority citation to the Health and Safety Code section 208 is deleted, because section 208 was repealed.

### **66270.30. Conditions applicable to all permits.**

#### **Section (I)**

The specific term “significant discrepancy” was replaced with the general term “discrepancy.” This is necessary because the new regulations require the reporting of both “significant discrepancies” and “priority discrepancies.” Sections 66264.72, subsections (a) and (c), and 66265.72, subsections (a) and (c) are cited for the proper discrepancy definitions. Subsection (a) defines a “significant discrepancy,” and subsection (c) defines a “priority discrepancy.” The provisions of sections 66264.72 and 66265.72 are identical. Section 66264.72 applies to permitted treatment, storage, and disposal facilities, and section 66265.72 applies to interim status treatment, storage, and disposal facilities. Both citations are necessary because the section being amended applies to both types of facilities.

Previous language applicable to significant discrepancies only has been replaced with new language stating that owners or operators shall handle discrepancies in accordance with requirements specified in sections 66264.72 and 66265.72. This change is necessary for clarity.

The authority citation to the Health and Safety Code section 208 is deleted, because section 208 was repealed.